

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District	District of Alaska
Name of Movant	Wilkins Furment	Prisoner No.	13477-006
		Case No.	3:05-cr-00097-JWS
Place of Confinement	Taft Correctional Institution 1500 Cadet Rd. Taft, California 93268		

RECEIVED

UNITED STATES OF AMERICA

V. WILKINS FURMENT

JUN 25 2007

MOTION

CLERK, U.S. DISTRICT COURT
ANCHORAGE, ALASKA

1. Name and location of court which entered the judgment of conviction under attack United States District Court for the District of Alaska
2. Date of judgment of conviction June 20, 2006
3. Length of sentence 120 months
4. Nature of offense involved (all counts) Count 1 - 21 U.S.C. §846 & 841(B)(1)(A) & (B):
Drug Conspiracy
5. What was your plea? (Check one)

(a) Not guilty ☐ (see below comments)
 (b) Guilty ☒
 (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

At the time the Plea Agreement was entered, Movant was not advised by counsel of the content of the Plea Agreement [Movant is illiterate], nor the consequence of said plea. On October 24, 2005, Movant originally pled NOT GUILTY to the six count Indictment. See PSR, Paragraph 50 [Education and Vocational Skills].
6. If you pleaded not guilty, what kind of trial did you have? (Check one) N/A

(a) Jury ☐
 (b) Judge only ☐
7. Did you testify at the trial?
Yes ☐ No ☐
8. Did you appeal from the judgment of conviction?
Yes ☒ No ☐ I filed a timely Notice of Appeal while incarcerated at the Anchorage County Jail - I have not received any further acknowledgment of said notice.

9. If you did appeal, answer the following:

(a) Name of court See Item No. 8

(b) Result _____

(c) Date of result _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☒ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court U.S. District Court for the District of Alaska

(2) Nature of proceeding On June 4, 2007 filed a Motion to reopen criminal case
under Fed.R.Civ.P. 60(b)(3) and (6) (Fraud on Court)

(3) Grounds raised Movant alleged counsel committed fraud by not advising Movant of
content of Plea Agreement nor consequences thereof.

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result This Court denied said Fed.R.Civ.P. 60(b) Motion and ordered Movant to
file Motion under 28 U.S.C. §2255 instead

(6) Date of result June 12, 2007

***note - Movant received said order by U.S. Mail on June 19, 2007.**

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Name of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

The instant Motion under 28 U.S.C. §2255 is being filed pursuant to this

Court's order [Court Doc. No. 71] (see reponse to Item No. 11 above), in lieu

of any appeal of decision.

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Conviction obtained by a plea of guilty which was unlawfully induced and without Movant's understanding of the nature or content of the Plea Agreement, or the consequences of such a plea.

Supporting FACTS (state *briefly* without citing cases or law): Movant is illiterate and was denied adequate explanation and disclosure of the true nature and content of the Plea Agreement by legal counsel. Further, counsel's misrepresentation of the nature of the Plea Agreement and consequences of said plea induced Movant to enter the plea without challenge or protest to the alleged facts. Had such misrepresentation not have been made, Movant would have entered a plea of NOT GUILTY to the charges.

B. Ground two: Denial of Sixth Amendment right to effective assistance of counsel.

Supporting FACTS (state *briefly* without citing cases or law): Movant's legal counsel withheld and misrepresented the true nature and content of the Plea Agreement and consequences of entering into said Plea Agreement. Counsel was motivated by his own financial gain and economy of time without regard for the welfare and actual innocence of Movant. Counsel was aware that Movant is illiterate and unable to comprehend the criminal proceeding and charges against him. Yet proceeded to mislead and induce Movant into pleading guilty rather than proceed to trial [see Court Doc. No. 67]

C. Ground three:

Denial of right to appeal conviction

Supporting FACTS (state *briefly* without citing cases or law): At sentencing, Movant became aware of his counsel's misrepresentations and requested counsel to file an immediate Notice of appeal. Counsel refused to file the Notice of Appeal because it would have disclosed counsel's unethical conduct and misrepresentations. Movant filed a Notice of Appeal *pro se* timely while incarcerated at Anchorage County Jail, but did not receive any further notification of his appeal status from the Court.

D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☐ Unknown [see Item 12(C)]

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Robert Hurst, Esq. (court appointed), Anchorage, Alaska 99501

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(b) At arraignment and plea Initial arraignment and plea - Robert Hurst, Esq.; Second
plea hearing - Lance Wells, Esq. 733 W. 4th Ave., Suite 308, Anchorage Alaska 99501

(c) At trial N/A

(d) At sentencing Lance Wells, Esq. 733 W. 4th Ave., Suite 308
Anchorage, Alaska 99501

(e) On appeal N/A(f) In any post-conviction proceeding currently pro se(g) On appeal from any adverse ruling in a post-conviction proceeding currently pro se

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.



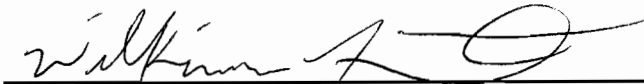
Signature of Attorney (if any)

Wilkins Furment, **pro se**

I declare under penalty of perjury that the foregoing is true and correct. Executed on

June 20, 2007.

Date



Signature of Movant

Wilkins Furment, Movant

CERTIFICATE OF SERVICE

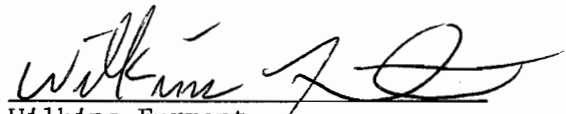
I, Wilkins Furment, here by certify that I have served a true and correct copy of **Motion Under 28 U.S.C. §2255 to Vacate, Set aside or Correct Sentence**, which is deemed filed at the time it was deposited with prison authorities for forwarding by U.S. Mail at Taft Correctional Institution which has no separate system for inmate legal mail [**Houston v. Lack, 487 U.S. 266, 276, 108 S.Ct. 2379 (1988)**], by placing same in a sealed, first class postage pre-paid envelope, addressed to:

Frank Russo, AUSA
222 West 7th Ave.
#9
Anchorage, Alaska 99513

and deposited same in the institution's mail service at Taft Correctional Institution at Taft, California.

I decalre under penalty of perjury [Title 28 U.S.C. §1746], that the foregoing is true and correct.

Dated this 20th day of June 2007.


Wilkins Furment